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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,830	09/23/2003	James L. Freeby	2032.2.1	4985

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SALT LAKE CITY, UT 84111

EXAMINER
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KATCHEVES, BASIL S

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/668,830

Applicant(s)

FREEBY ET AL

Examiner

Basil Katcheves

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*MC*

*8.10.05*

DETAILED ACTION

***Claim Rejections - 35 USC § 103***

Claims 1-10, 12-14, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 237,172 to Dentler as in the previous office action.

Regarding claim 1 Stuber discloses a barrier (fig. 7: 24) comprised of a bentonite material surrounding a pole (fig. 7: 10). In addition, Stuber does not disclose the bentonite as being exposed to the above ground environment. Dentler discloses a pole protector ringed around a pole and located at ground level (fig. 2: D). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by placing the protective bentonite rings at the ground surface, as disclosed by Dentler to help firmly anchor the post to the ground (Dentler, lines 52-53). Applicant should note that although the prior art does not specifically disclose fire prevention, the prior art is the structural equivalent of the basic claim structure and therefore, has the inherent capability of functioning as a fire stop as in the applicant's claims.

Regarding claim 2, Stuber discloses a retaining device (fig. 7: 20) for retaining the material.

Regarding claim 3, Stuber discloses a pole (fig. 7: 10).

Regarding claims 4 and 16, Stuber discloses the material as surrounding the pole (fig. 7).

Regarding claims 5-7, Stuber discloses the basic claim structure of the instant application but does not disclose specific dimensions between the perimeter and the pole. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claims 8-10, Stuber discloses the basic claim structure of the instant application but does not disclose specific dimensions of the material depth. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

Regarding claims 12 and 14, Stuber discloses a depression (fig. 8: 16) at the boundary of the material.

Regarding claims 13 Stuber discloses a barrier (fig. 7: 24) comprised of a bentonite material surrounding a pole (fig. 7: 10). Stuber does not disclose the bentonite as being exposed to the above ground environment. Dentler discloses a pole protector ringed around a pole and located at ground level (fig. 2: D). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by placing the protective bentonite rings at the ground surface, as disclosed by Dentler to help firmly anchor the post to the ground (Dentler, lines 52-53). Applicant should note that although the prior art does not specifically disclose fire prevention, the prior art is the structural equivalent of the basic claim structure and therefore, has the inherent capability of functioning as a fire stop and as a vegetation growth barrier as in the applicant's claims. Also, the combined prior art discloses the

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basic claim structure of the instant application but does not disclose specific percentages of bentonite as in these claims. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims depending upon a specific use and need.

Regarding claim 17, Stuber does not specifically disclose the bentonite as sloping upwards toward the pole. However, Stuber discloses mixing the bentonite with concrete (column 3, lines 37-42). A centrally sloping slurry, toward the central pole, would be inherent, as gravity acts upon a slurry to provide an upward sloping toward the slurry's center as it is poured.

Regarding claim 19, Stuber does not disclose adding additional bentonite to the bentonite based mixture. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add additional material to the mixture in response to situations where the mixture is being overtaken, eroded or generally lacking. In construction situations, it is common to replace materials such as gravel, soil, grass, seed, concrete, etc., as the effects of weather, traffic, etc., require the need for maintaining materials to their proper amount.

Claims 11, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 237,172 to Dentler further in view of U.S. Patent No. 5,048,605 to Toon et al. as in the previous office action.

Regarding claims 11 and 15, Stuber discloses the bentonite material in an annular ring around the pole (fig. 7: 12) wrapped by a rubber sheet, not a plastic sheet. Toon discloses a pole surrounded by bentonite (column 1, line 29) having a plastic sheet wrapped around (column 5, lines 62-66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by using a plastic sheet, as disclosed by Toon, in order to increase the barrier protection while reducing costs.

Regarding claim 20, Stuber discloses bentonite material in an annular ring around a pole (fig. 7: 12) wrapped by a rubber sheet, not a plastic sheet. Toon discloses a pole surrounded by bentonite (column 1, line 29) having a plastic sheet wrapped around (column 5, lines 62-66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by using a plastic sheet, as disclosed by Toon, in order to increase the barrier protection while reducing costs. Also, Stuber in view of Toon discloses the basic claim structure of the instant application but does not disclose specific dimensions of the bentonite material as claimed in the application. Applicant fails to show criticality for specifically claimed dimensions of bentonite and soil, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims for use in specific

circumstances. Also, Stuber does not disclose the bentonite as being exposed to the above ground environment. Dentler discloses a pole protector ringed around a pole and located at ground level (fig. 2: D). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by placing the protective bentonite rings at the ground surface, as disclosed by Dentler to help firmly anchor the post to the ground (Dentler, lines 52-53). Applicant should note that although the prior art does not specifically disclose fire prevention, the prior art is the structural equivalent of the basic claim structure and therefore, has the inherent capability of functioning as a fire stop as in the applicant's claims.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 237,172 to Dentler further in view of U.S. Patent No. 6,399,544 to Fairchild et al. as in the previous office action.

Regarding claim 18, Stuber does not specifically disclose pumping of the material. Fairchild discloses the pumping of a bentonite material (abstract, line 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by using a pumpable bentonite material, as disclosed by Fairchild, in order to speed installation time.

### ***Response to Remarks***

Applicant's remarks filed 3/23/05 have been fully considered but they are not persuasive. Applicant states that the prior art fails to teach protecting an object from

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encroaching elements such as fire, water, plant growth, etc. However, the prior art meets the basic claim structure of the applicant's invention, therefore the prior art is inherently capable of being used in the same manner as that of the application. The applicant should note that the uses of the claimed structure and the prior art are not only limited to these few functions. The basic existence of the combined prior art will perform the basic functions of the application by performing the same functions for which the prior art was originally intended for. To simplify, a pole protector/support (prior art) will function as a pole protector/support, but in the same instance, will inherently prevent fire or growth from encroaching the pole.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

  
Basil Katcheves

5/19/05

Primary Examiner, AU 3635